

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LISA PATRICO, On Behalf of The Nestlé 401(k)
Savings Plan and All Other Similarly Situated
Individual Account Plans

Plaintiff,

v.

VOYA FINANCIAL, INC.; VOYA
INSTITUTIONAL PLAN SERVICES, LLC; VOYA
INVESTMENT MANAGEMENT, LLC; and VOYA
RETIREMENT ADVISORS, LLC,

Defendants.

Civil Action No. 1:16-cv-07070-LGS-JLC

**NOTICE OF MOTION TO DISMISS
THE CLASS ACTION COMPLAINT**

PLEASE TAKE NOTICE that Defendants Voya Financial, Inc., Voya Institutional Plan Services, LLC, Voya Investment Management, LLC, and Voya Retirement Advisors, LLC (collectively, “Defendants”), by their undersigned counsel, will move this Court, on a date and time to be determined by the Court, for an Order dismissing with prejudice the Class Action Complaint for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6), and for lack of relevant ERISA fiduciary status as defined by ERISA § 3(21), 29 U.S.C. § 1002(21)(A). In support of their Motion, Defendants rely on the Memorandum in Support of Defendants’ Motion to Dismiss the Class Action Complaint and the Declaration of W. Glenn Merten in Support of Defendants’ Motion to Dismiss the Class Action Complaint and the exhibits attached thereto, filed concurrently herewith.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Respectfully submitted,

Dated: November 11, 2016

/s/ James F. Jorden

James F. Jorden, admitted *pro hac vice*
Waldemar J. Pflepsen, Jr., admitted *pro hac vice*
W. Glenn Merten, admitted *pro hac vice*
CARLTON FIELDS JORDEN BURT, P.A.
1025 Thomas Jefferson Street NW
Suite 400 West
Washington, DC 20007
(202) 965-8100

Robert W. DiUbaldo
CARLTON FIELDS JORDEN BURT, P.A.
405 Lexington Avenue, 36th Floor
New York, NY 10174-0002
Phone: (212) 785-2577

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of November, 2016, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF System, which will send electronic notification of such filing to all counsel of record.

/s/ W. Glenn Merten

W. Glenn Merten